

# Order

Michigan Supreme Court  
Lansing, Michigan

July 13, 2005

Clifford W. Taylor  
Chief Justice

Michael F. Cavanagh  
Elizabeth A. Weaver  
Marilyn Kelly  
Maura D. Corrigan  
Robert P. Young, Jr.  
Stephen J. Markman  
Justices

ADM File No. 2004-52

Amendment of  
Rule 6.120 of the  
Michigan Court Rules

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On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendment of Rule 6.120 of the Michigan Court Rules is adopted, effective January 1, 2006.

[Additions are indicated in underlining and deletions are indicated in strikeover.]

## Rule 6.120 Joinder and Severance; Single Defendant

- (A) Permissive Charging Joinder. ~~An~~ The prosecuting attorney may file an information or indictment ~~may charge~~ that charges a single defendant with any two or more offenses. Each offense must be stated in a separate count. Two or more informations or indictments against a single defendant may be consolidated for a single trial.
- (B) Right of Severance; Unrelated Offenses. ~~On the defendant's motion, the court must sever unrelated offenses for separate trials. For purposes of this rule, two offenses are related if they are based on~~
- (1) ~~the same conduct, or~~
- (2) ~~a series of connected acts or acts constituting part of a single scheme or plan.~~
- (C) Other Joinder or Severance. ~~On the motion of either party, except as to offenses severed under subrule (B), the court may join or sever offenses on the ground that joinder or severance is appropriate to promote fairness to the parties and a fair determination of the defendant's guilt or innocence of each offense. Relevant factors include the timeliness of the motion, the drain on the parties' resources, the potential for confusion or prejudice stemming from either the number of charges or the complexity or nature of the evidence, the potential for harassment, the convenience of witnesses, and the parties' readiness for trial. Subject to an objection by either party, the court may sever offenses on its own initiative.~~
- (B) Postcharging Permissive Joinder or Severance. On its own initiative, the motion of a party, or the stipulation of all parties, except as provided in subrule (C), the court may join offenses charged in two or more informations or indictments against a single defendant, or sever offenses charged in a single information or indictment against a

single defendant, when appropriate to promote fairness to the parties and a fair determination of the defendant's guilt or innocence of each offense.

- (1) Joinder is appropriate if the offenses are related. For purposes of this rule, offenses are related if they are based on
    - (a) the same conduct or transaction, or
    - (b) a series of connected acts, or
    - (c) a series of acts constituting parts of a single scheme or plan.
  - (2) Other relevant factors include the timeliness of the motion, the drain on the parties' resources, the potential for confusion or prejudice stemming from either the number of charges or the complexity or nature of the evidence, the potential for harassment, the convenience of witnesses, and the parties' readiness for trial.
  - (3) If the court acts on its own initiative, it must provide the parties an opportunity to be heard.
- (C) Right of Severance; Unrelated Offenses. On the defendant's motion, the court must sever for separate trials offenses that are not related as defined in subrule (B)(1).

Staff Comment: The amendments, effective January 1, 2006, of the rule reflect the recommendations of the Committee on the Rules of Criminal Procedure as requested by the Court in *People v Nutt*, 469 Mich 565 (2004).

The staff comment is not an authoritative construction by the Court.



I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

July 13, 2005      Corbin R. Davis  
Deputy Clerk